

Domestic Violence:
One Case - From Response to
Resolution

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Case Overview

- Kali and Hodges have been dating for a couple of years and are living together.
- August 1, Hodges was looking through her phone and accused her of cheating. Took phone, threw it in toilet.
- When she went to get it, grabbed her by head, pushed her against wall, and strangled her with both hands and threw her to ground.
- Then he got on top of her straddling her stomach, and strangled her until she saw black spots and then passed out.

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Case Overview

- When Kali awoke, Hodges was in another room. He grabbed her car keys and left.
- Kali went to her friend Courtney's house next door.
- Kali was crying and distressed. Told Courtney, "Hodges threw me to the ground and choked me. I couldn't breathe. I passed out. He took my car. I'm scared."

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Case Overview

- Hodges then showed up at Courtney's house and banged on the door looking for Kali.
- Hodges said, "Kali better not be hiding in your house. You'll both regret it."
- Courtney calls police.
- Hodges was gone when police arrived. He was arrested August 10 and bonded out. The car was located in a nearby town.
- "No contact" bond condition put in place
- Police photos show the house to be in disarray where Kali says fight took place

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Case Overview

- August 15, Kali calls police and says she wants to drop charges. Says they are going break up and she wants it over with.
- August 16, Detective meets with Kali.
 - Kali admits that Hodges has been calling and begging her to drop charges.
 - Detective can see calls and texts from Hodges in violation of bond condition
- September 1, Hodges indicted
- September 10, Kali asks DA's office to drop cases. Says she exaggerated and is now living with Hodges

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Written Statement

VERNON POLICE DEPARTMENT
STATEMENT

The State of Texas is _____
County of Tarrant is _____

Date: 9/22/21 Time: 10:00 AM
Officer: [Signature] Patrol # [Number]

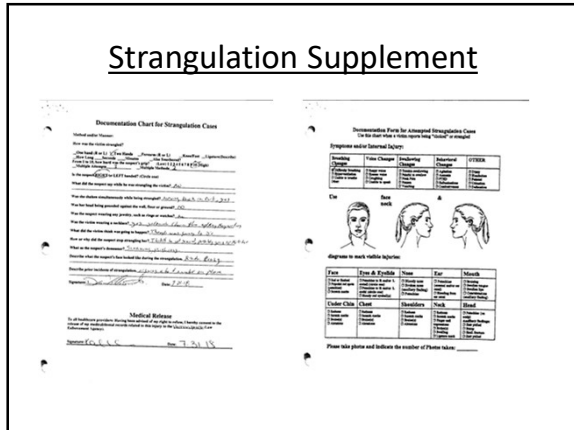
I, the undersigned, being duly sworn, depose and say that the above is a true and correct statement of the facts and circumstances as they occurred to the best of my knowledge and belief, and that I am not a party to the same.

This statement was completed at 11:00 AM on the 21 day of July, 2021

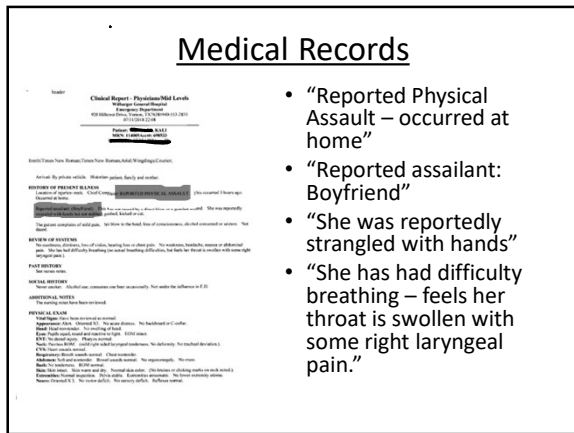
I have read each page of this document consisting of 3 pages, each page of which bears my signature, and I agree to the contents of this statement, and I understand that I am not bound by it unless I sign it.

Signature: [Signature] Date: 9/22/21

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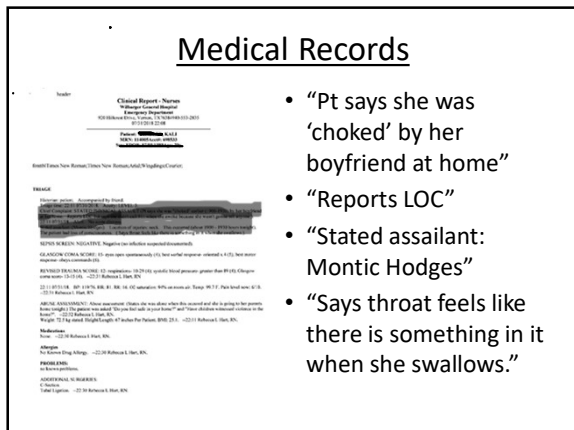
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Medical Records

- “Reported Physical Assault – occurred at home”
- “Reported assailant: Boyfriend”
- “She was reportedly strangled with hands”
- “She has had difficulty breathing – feels her throat is swollen with some right laryngeal pain.”

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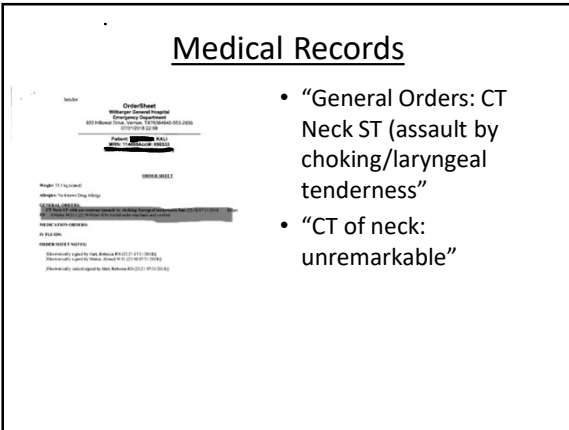


Medical Records

- “Pt says she was ‘choked’ by her boyfriend at home”
- “Reports LOC”
- “Stated assailant: Montic Hodges”
- “Says throat feels like there is something in it when she swallows.”

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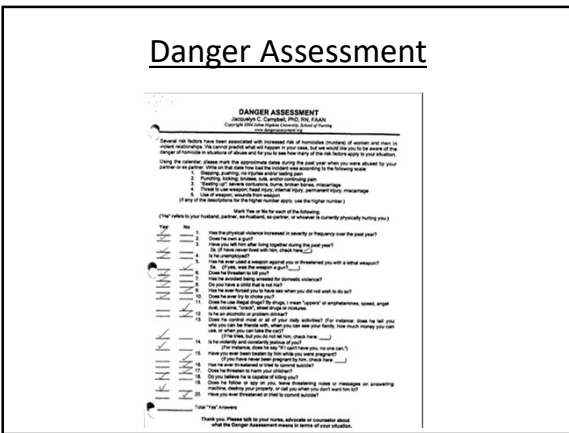
Medical Records



- “General Orders: CT Neck ST (assault by choking/laryngeal tenderness”
- “CT of neck: unremarkable”

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Danger Assessment

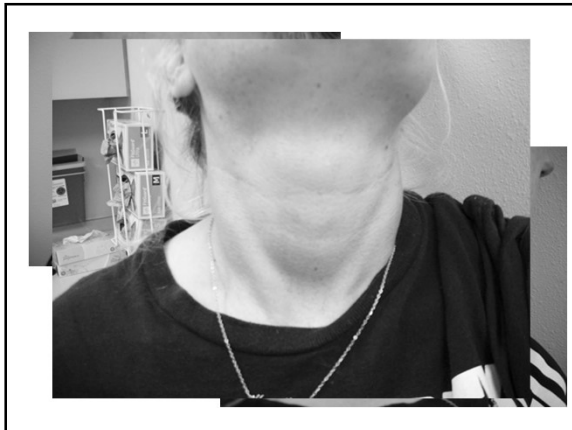


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Criminal History

- 2012** – Assault FV – 20 days in jail
- 2012** – Assault FV – 20 days in jail
- 2012** – Assault FV – 20 days in jail
- 2015** – Assault FV – 90 days in jail
- 2015** – Failure to ID – 90 days in jail
- 2017** – Assault FV – 3 days in jail (Kali victim)

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Initial Considerations

1. Type of crime
2. Criminal history of defendant
3. History of relationship with Kali

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What level of risk do we have here?

RISK

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Case Analysis

- The **best tools** to protect this victim
- The steps we should take **in court** to increase safety for the victim
- Preparing the case **with a non-cooperative** victim
- Using **expert witnesses** to help get our case over the hump

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Initial Response

- Kali was immediately offered connection to domestic violence services
 - Officer on scene provided her with card and put her in contact with advocate



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Why services?

- A study of the effects of providing immediate victim services at the scene of the crime revealed that victims:
 - Are more likely to cooperate
 - Are more willing to accept services
 - Are more likely to remain safe during the pendency of the case, and
 - Are more likely to be satisfied with the criminal justice response.

Jill Theresa Messing & Jacquelyn Campbell, et al. "Police Departments' Use of the Lethality Assessment Program: A Quasi-Experimental Evaluation," U.S. Department of Justice (July 2014)

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What does this have to do with prosecution?

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Conditions of Bond

- Art. 17.292 - Magistrate’s Order of Emergency Protection
 - Mandatory in cases of SBI or use of DW (not strangulation!)
- Art. 17.40(a): A magistrate may impose any reasonable condition of bond related to the safety of the alleged victim or to the safety of the community

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Conditions of Bond

- No Contact Provision
 - “Do not initiate either directly or through a third-party any communications with VICTIM or any household member of said individual, and do not go within BLANK yards of said individual, any household member of said individual, or the residence or work address of said individual.”

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Conditions of Bond

- Standard conditions (felonies)
 - Non contact
 - Reporting to CSCD (bond officer)
 - Weekly/monthly
 - Drug testing
 - Home confinement
 - GPS monitoring (high risk)

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Revoking, Modifying or Increasing Bond

- Why increase, modify, or revoke bond?
 - The bond is simply too low
 - The bond does not have appropriate conditions
 - The defendant has failed to comply with conditions
 - Failed to report
 - Failed U/A
 - Contacted victim
 - The defendant has committed a new crime
- Err on the side of victim safety!

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Modifying Bond Conditions

Trial courts have the discretion to increase any bond after a finding that it is defective, too low, the sureties are unacceptable, or for any good and sufficient cause shown. CCP 17.09 §3. *Miller v. State*, 855 S.W.2d 92, 93-94 (Tex. App. – Houston [14th Dist.] 1993)

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Modifying Bond Conditions

- Factors the Courts must consider:
 - Whether the defendant has complied with the conditions of bond,
 - The nature circumstances, and aggravating factors of the charged offense,
 - The defendant’s prior criminal history, and
 - The future safety of the victim and the community. CCP Art. 17.40 & 17.152, *Ex parte Green*, 940 S.W.2d 799, 801 (Tex. App. – El Paso 1997)

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Increasing or Modifying Bond

- Items to include in the motion:
 - Defendant’s original bond and requested amount
 - Defendant’s criminal history
 - Nature of underlying offense
 - Victim safety concerns
 - Reason for filing (new offense, lack of compliance with terms, insufficient amount, insufficient conditions, etc.)
 - Attach PC affidavits from new offenses
 - Any request for additional bond conditions (no contact, GPS, etc.)

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What happens next?

- The trial court may issue an arrest warrant for the defendant and raise the bond based solely on the “good and sufficient cause” included in the motion.
 - The statute does not require notice to defendant or counsel prior to issuance of the warrant
 - Defendant may challenge the increase through a *habeas corpus* motion.
 - Rules of Evidence don’t apply to *habeas*. TRE 101(e)(3)(C)
- The trial court may set a hearing
 - State must produce evidence to demonstrate reason
 - Rules of Evidence will apply to hearing to increase bond. TRE 101(e)(3)(C)

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Revoking and Denying Bond

- The Texas Constitution has a strong preference for bail in almost every case
- Cases where bail can be denied:
 - Capital murder where proof evident,
 - Offenders who violate a condition of bail related to the safety of the victim or the community, and
 - Offenders who violate protective orders.
- Denying bail is a powerful remedy
 - Not appropriate for every case
 - Vital tool in high-risk cases

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Revoking and Denying Bond

- CCP 17.152 contains provisions
- Defendant is entitled to a hearing
 - Rules of evidence apply
 - You may need your victim
 - Possibility of a no bond vastly increases safety
- Prove up case without victim if possible
 - Admissible hearsay (medical records, 911 call, non-testimonial utterances)
 - Third-party witnesses and officers
 - Forfeiture by wrongdoing

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Should we revoke/deny or increase the bond in this case?

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Getting Ready for Trial
Can we prove this case
without the victim?

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A Fresh Look at the Evidence:
The Bad

- Statement to Officer
 - Inadmissible “testimonial” statement to police about what happened - *Crawford*
- Strangulation Supplement
 - Injuries not well documented – only “difficulty breathing” checked
 - No officer observations of specific injuries

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A Fresh Look at the Evidence:
The Ugly

- Medical Records
 - “CT of neck: unremarkable”
 - Medical records do not note visible injuries to the neck
- Photographs
 - Difficult to discern injuries
- Victim recantation/minimization
 - Back with offender
 - Says that she exaggerated injuries

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**A Fresh Look at the Evidence:
The Good**

- Admissible Hearsay
 - TRE 803(2) **Excited Utterance**: “A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.”
 - “Hodges threw me to the ground and choked me. I couldn’t breathe. I passed out. He took my car. I’m scared.”
 - Said by Kali to Courtney, the neighbor

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**A Fresh Look at the Evidence:
The Good**

- Admissible Hearsay
 - TRE 803(4) – **Statement Made for Medical Diagnosis or Treatment**. A Statement that:
 - (A) is made for- and is reasonably pertinent to – medical diagnosis or treatment; and
 - (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.
 - Numerous statements to medical personnel
 - Assault occurred at home, assailant was boyfriend (including name), strangled with hands, difficulty breathing, throat feels swollen, laryngeal pain, choked by boyfriend, loss of consciousness, feels like something stuck in throat

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**A Fresh Look at the Evidence:
The Good**

- Physical evidence
 - Photographs inside house support that there was a struggle
 - Phone in the toilet
- Third-party witness
 - Courtney, the neighbor, can describe demeanor of victim at time of offense
 - Can describe statements of Hodges after crime
- Circumstances of police involvement
 - Police responded to 911 call because of the need for assistance
 - Officer observations of victim/scene
 - Kali’s car was located in another town

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Challenges

- Victim is back with defendant and now minimizing the incident
- Lack of visible injuries
- Unbiased medical records – “CT of neck: Unremarkable”

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Domestic Violence Experts

- **DV experts elevate your case to the next level**
 - Explain battering and its effects on victims
 - Explain power and control tactics used by abusers
 - Normalize behavior that might be misinterpreted and hurt victim credibility
 - Convert obstacles into powerful evidence
 - Connect the dots

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When to use an expert?

- Victim recantation
- Victim minimization
- Delay in reporting
- Absence from trial
- Remaining in relationship
- Affidavit of non-prosecution
- Any behavior that makes you say “hmmm”

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Purpose of testimony

To educate the jury on the dynamics of intimate partner violence and to provide them with a framework for understanding the behavior of the victim.

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Domestic Violence Experts

- Power and Control Wheel – accepted tool in explaining P&C relationships
- Go through the pieces
- Provide hypotheticals that relate to the facts of your case



The diagram is a circular wheel with 'POWER AND CONTROL' in the center. It is divided into eight segments, each representing a tactic of power and control. The segments are: 1. Using Coercion and Threats (top), 2. Using Intimidation (top-right), 3. Using Emotional Abuse (right), 4. Using Isolation (bottom-right), 5. Minimizing and Blaming (bottom), 6. Using Children (bottom-left), 7. Using Male Privilege (left), and 8. Using Economic Abuse (top-left). The wheel is labeled 'PHYSICAL VIOLENCE' on the left and 'MENTAL VIOLENCE' on the right.

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Who can be an expert?

- **TRE 702:** If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by **knowledge, skill, experience, training** or education may testify thereto in the form of opinion or otherwise.
- Potential experts: PhDs, LPCs, victim advocates, counselors, shelter employees, college professors, VAC, police officer

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Creating Your Own Expert

- Collaborate with DV non-profit in your region
- Find someone with education and/or experience and interest
 - Conferences, articles, court transcripts
 - Training at the Institute for Domestic Violence And Sexual Assault at the University of Texas - <https://sites.utexas.edu/idvsa/training-programs/expert-witness-training/>
- List the expert on ALL of your DV cases

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How can a DV expert help in our fact situation?

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Strangulation Expert

Separating
MYTH from **REALITY**

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Who can be an expert?

- Medical doctor, EMT, Nurse, PNA, Forensic Nurse, etc.
 - Find a local professional with an interest
 - Articles, journals, transcripts
 - Training: www.strangulationtraininginstitute.com.
- Expert does not have to be the treating physician at the ER

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Strangulation Expert

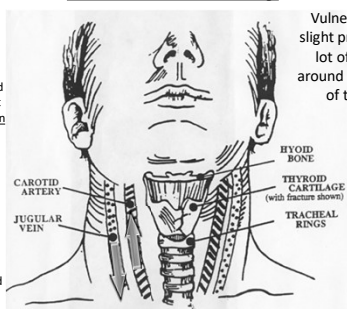
- Start with credentials
- Explain the anatomy of the neck
- Describe how little pressure it takes to impede the flow of breath or blood
- Explain the likely absence of visible physical injuries

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Neck Anatomy

Carotid Arteries:
Major vessels that transport oxygenated blood from the heart and lungs to the brain

Jugular Veins:
Major vessels that transport deoxygenated blood from the brain back to the heart



Vulnerable to just slight pressure, Not a lot of protection around the structures of the neck...

Press your throat!

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Pressure Required to Impede

- 4.4 pounds of pressure to close the jugular veins
- 11 pounds of pressure to close the carotid arteries
- 30 pounds to close the trachea
- Comparisons:
 - Trigger pull: 4-8 pounds
 - Soda can: 22 pounds
 - Handshake: 50 pounds

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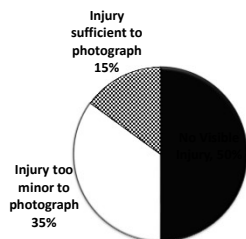
Duration of Applied Force

- 11 pounds of pressure on both carotid arteries will result in a loss of consciousness in 10 seconds
 - Consciousness will be regained in 10 seconds
- Brain damage can occur in less than a minutes
- Death will occur within 4-5 minutes if strangulation persists

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Lack of visible injuries

“A Review of 300 Attempted Strangulation Cases”
Journal of Emergency Medicine 21:3 (2001)
The “San Diego Study”



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Strangulation Expert

- Use a chart to tally up the signs and symptoms of strangulation in your case
- Start with physical injuries (visible, if they exist) and then non-visible signs and symptoms
 - Mark A for a symptom indicating impeded airway
 - Mark B for a symptom indicating impeded blood

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Final Point

- Emphasize that statute does not require proof that breath or blood was fully blocked.
 - Intentionally, knowingly, or recklessly cause BI by impeding the normal breath or circulation of the blood of a person by
 - Applying pressure to the person's throat or neck, or
 - Blocking the person's nose or mouth
- Impede: "to interfere with or slow the progress of."
- Have expert use a hose to demonstrate that a pinch can result in the flow being impeded.

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How can a strangulation expert help in our fact situation?

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Strangulation Expert

- “Performing CT of the neck after acute strangulation injury rarely identifies clinically significant findings.”

> Ann Emerg Med. 2020 Mar;75(3):329-338. doi: 10.1016/j.annemergmed.2019.07.018. Epub 2019 Oct 4.

Evaluation of Nonfatal Strangulation in Alert Adults

Eric C Matzra¹, Jason T Schaffer¹, Barbra A Bachmeier¹, Jonathan M Kirschner¹, Paul J Murray Jr¹, Steven K Roumpff¹, Christian C Strachan¹, Benton R Hunter²

Affiliations + expand
PMID: 31591013 DQI: 10.1016/j.annemergmed.2019.07.018

Abstract

Study objective: There is a paucity of evidence to guide the diagnostic evaluation of emergency department (ED) patients presenting after nonfatal strangulation (manual strangulation or near hanging). We seek to define the rate of serious injuries in alert strangled patients and determine which symptoms and examination findings, if any, predict such injuries.

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Case law Update

- *Thomas v. State*
 - Art. 38.371
- *Ortiz v. State*
 - Assault bodily injury FV is **not** a lesser included offense of assault by occlusion FV
- *Brown v. State*
 - Forfeiture by wrongdoing

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Case law Update

- *Kingsbury v. State*
 - General expert testimony on FV admissible
- *James v. State*
 - General expert testimony on FV admissible

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